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POSTAL SERVICE

39 CFR Part 601

Purchasing of Property and Services; Supplier Debarment, Suspension, and Ineligibility

AGENCY: Postal Service.™

ACTION: Final rule.

SUMMARY: The Postal Service is revising its regulations governing supplier debarment, suspension, and ineligibility to reflect that the Postal Service has eliminated its separate list of debarred, suspended, or ineligible suppliers, and now uses the list maintained by the General Services Administration (GSA) under its System for Award Management (SAM).

DATES: *Effective date:* [INSERT DATE THIRTY DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Paul McGinn, 202-268-4368.

SUPPLEMENTARY INFORMATION: The Postal Service (USPS®) is revising 39 CFR 601.113, governing supplier debarment, suspension, and ineligibility. The Postal Service has eliminated its own separate list of debarred, suspended, and ineligible suppliers, and now uses the GSA's System for Award Management (SAM) to determine whether a particular supplier is suspended, debarred, or ineligible, and to notify the public when the USPS suspends or debars a supplier. Necessary changes have been made to the language of § 601.113, including

replacement of the term “debarment, suspension, and ineligibility” with “suspension, debarment, and ineligibility” to reflect the sequence of events followed in that process. These changes are explained in more detail below.

Additionally, 39 CFR 601.108(c), concerning SDR Official disagreement resolution, has been revised to provide a new address for lodging supplier disagreements.

Explanation of Changes

§ 601.108: SDR Official disagreement resolution.

Paragraph (c) of this section has been revised to provide a new address for a supplier to lodge a disagreement with the Supplier Disagreement Resolution Official (SDRO).

§ 601.113: Debarment, suspension, and ineligibility.

Throughout this section, references to the Postal Service’s List of Debarred, Suspended, and Ineligible Suppliers have been replaced by references to the General Services Administration’s (GSA) System for Award Management (SAM).

The title of § 601.113 *Debarment, suspension, and ineligibility* has been changed to *Suspension, debarment, and ineligibility*, and throughout this section, the term “debarred, suspended, and ineligible” and variants thereof have been replaced by the term “suspended, debarred, and ineligible.”

Paragraph (c)(1) states that the Postal Service uses SAM to determine whether a supplier has been suspended, debarred, or proposed for debarment.

Paragraph (c)(2) states that SAM maintains a consolidated database of all persons and entities suspended, debarred, proposed for debarment, or declared ineligible by Federal agencies or the Government Accountability Office (GAO), which is accessible to the public at <https://www.sam.gov>.

Paragraph (c)(3) states that, through a representative, the Postal Service's vice president, Supply Management, will use SAM to report Postal Service suspension, debarment, and proposed debarment decisions, including changes in the status of any suspended or debarred supplier or affiliate.

The title of paragraph (d)(1) has been changed to *Treatment of suppliers included in the SAM Exclusions database*, and this paragraph has been revised to delete the reference to the Postal Service list.

Old paragraph (d)(2) has been deleted because of the discontinuance of the Postal Service list, and paragraphs (d)(3), (d)(4), and (d)(5) have been renumbered. Earlier discussion and references in these paragraphs to the Postal Service list have been deleted. These paragraphs have all been revised to reference SAM rather than previous lists.

Paragraph (e) has been retitled *Causes for suspension*. No further changes have been made to this paragraph.

Paragraph (f) has been retitled *Period of suspension*. No further changes have been made to this paragraph.

Paragraph (g) has been retitled *Procedural requirements for suspension*. No further changes have been made to this paragraph.

Paragraph (h) has been retitled *Causes for debarment*. No further changes have been made to this paragraph.

Paragraph (i) has been retitled *Mitigating factors*. No further changes have been made to this paragraph.

Paragraph (j) has been retitled *Period of debarment*. No further changes have been made to this paragraph.

Paragraph (k) has been retitled *Procedural requirements for debarment*. In addition, language has been added to lay out in greater detail the procedural steps of the debarment process, including the requirement that the supplier may submit, in person or in writing, information and argument in opposition to the proposed debarment.

Old paragraph (k)(3) has been deleted and (k)(4) and (k)(5) have been renumbered.

List of Subjects in 39 CFR Part 601

Government procurement, Postal Service.

Accordingly, 39 CFR part 601 is amended as follows:

PART 601—PURCHASING OF PROPERTY AND SERVICES

1. The authority citation for 39 CFR part 601 continues to read as follows:

Authority: 39 U.S.C. 401, 404, 410, 411, 2008, 5001-5605.

2. In § 601.108, revise paragraph (c) to read as follows:

§ 601.108 SDR Official disagreement resolution.

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(c) *Lodging.* The disagreement under § 601.107 or contest of decision under § 601.105 must be lodged with the SDR Official in writing via facsimile, e-mail, hand delivery, or U.S. Mail. The disagreement under § 601.107 or contest of decision under § 601.105 must state the factual circumstances relating to it and the remedy sought. A disagreement under § 601.107 must also state the scope and outcome of the initial disagreement resolution attempt with the contracting officer. The address of the SDR Official is: Supply Management, Room 1141 (Attn: SDR Official), United States Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC 20260–1141; e-mail Address: *SDROfficial@usps.gov*; Fax Number: (202) 268–0075.

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3. Revise § 601.113 to read as follows:

§ 601.113 Suspension, debarment, and ineligibility.

(a) *General.* Except as provided otherwise in this part, contracting officers may not solicit proposals from, award contracts to, or, when a contract provides for such consent, consent to subcontracts with suspended, debarred, or ineligible suppliers.

(b) *Definitions.*—(1) *Affiliate.* A business, organization, person, or individual connected by the fact that one controls or has the power to control the other or by the fact that a third party controls or has the power to control both. Indications of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, contractual relationships, common use of employees, or a business

entity organized following the suspension, debarment, or proposed debarment of a supplier which has the same or similar management, ownership, or principal employees as the supplier that was suspended, debarred, or proposed for debarment. Franchise agreements are not conclusive evidence of affiliation if the franchisee has a right to profit in proportion to its ownership and bears the risk of loss or failure.

(2) *Debarment*. An exclusion from contracting and subcontracting for a reasonable, specified period of time commensurate with the seriousness of the offense, failure, or inadequacy of performance.

(3) *General Counsel*. This includes the General Counsel's authorized representative.

(4) *Indictment*. Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense is given the same effect as an indictment.

(5) *Ineligible*. An exclusion from contracting and subcontracting by an entity other than the Postal Service under statutes, executive orders, or regulations, such as the Davis-Bacon Act, the Service Contract Act, the Equal Employment Opportunity Acts, the Walsh-Healy Public Contracts Act, or the Environmental Protection Acts and related regulations or executive orders, to which the Postal Service is subject or has adopted as a matter of policy.

(6) *Suspension*. An exclusion from contracting and subcontracting for a reasonable period of time due to specified reasons or the pendency of a debarment proceeding.

(7) *Supplier*. For the purposes of this part, a supplier is any individual, person, or other legal entity that:

(i) Directly or indirectly (e.g., through an affiliate) submits offers for, is awarded, or reasonably may be expected to submit offers for or be awarded, a Postal Service contract, including a contract for carriage under Postal Service or commercial bills of lading, or a subcontract under a Postal Service contract; or

(ii) Conducts business or reasonably may be expected to conduct business with the Postal Service as a subcontractor, an agent, or as a representative of another supplier.

(c) *Suspension, debarment, and ineligible list*. (1) The Postal Service uses the General Services Administration's System for Award Management (SAM) to determine if suppliers are suspended, debarred, or proposed for debarment.

(2) SAM maintains a consolidated database of all persons and entities suspended, debarred, proposed for debarment, or declared ineligible by Federal agencies or the Government Accountability Office. SAM is accessible by the public on GSA's website at <https://www.sam.gov>.

(3) Through a representative, the vice president, Supply Management will use the SAM Exclusions database to report Postal Service suspensions, debarments and proposed debarment decisions; including changes in the status of suppliers and any of their affiliates. Inquiries concerning listed suppliers should be directed to the agency or other authority that took the action.

(d) *Treatment of suppliers included in the SAM Exclusions database.* (1)

Contracting officers will review the SAM Exclusions database before making a contract award.

(2) Suppliers included in the SAM Exclusions database are excluded from receiving contracts and subcontracts, and contracting officers may not solicit proposals or quotations from, award contracts to, or, when a contract provides for such consent, consent to subcontracts with such suppliers, unless the vice president, Supply Management, or his or her designee, after consultation with the General Counsel, has approved such action.

(3) Suppliers included in the SAM Exclusions database may not provide goods or services to other persons or entities for resale, in whole or part, to the Postal Service and such other persons or entities are obligated to review the consolidated GSA list in order to exclude suppliers suspended or debarred by the Postal Service from performing any part of a Postal Service contract.

(4) The suspension, debarment, or ineligibility of a supplier does not, of itself, affect the rights and obligations of the parties to any valid, pre-existing contract. The Postal Service may terminate for default a contract with a supplier that is suspended, debarred, or determined to be ineligible. Contracting officers may not add new work to any contract with a supplier that is suspended, debarred, or determined to be ineligible by supplemental agreement, by exercise of an option, or otherwise (unless the work is classified as an insignificant or significant minor service change to a mail transportation contract), except with

the approval of the vice president, Supply Management, or designee after consultation with the General Counsel.

(e) *Causes for suspension.* (1) The vice president, Supply Management, may suspend any supplier, including any of its affiliates, for causes such as the following:

(i) If the supplier commits, is indicted for, or is convicted of fraud or a criminal offense incidental to obtaining, attempting to obtain, or performing a government contract, violates a Federal antitrust statute arising out of the submission of bids and proposals, or commits or engages in embezzlement, theft, forgery, bribery, falsification or destruction of records, or receipt of stolen property, or any other offense indicating a lack of business integrity or business honesty;

(ii) For any other cause of such serious and compelling nature that suspension is warranted; or

(iii) If the Postal Service has notified a supplier of its proposed debarment under this part.

(f) *Period of suspension.* A suspension will not exceed one year in duration, except a suspension may be extended for reasonable periods of time beyond one year by the vice president, Supply Management. The termination of a suspension will not prejudice the Postal Service's position in any debarment proceeding. A suspension will be superseded by a decision rendered by the vice president, Supply Management, under paragraph (k)(5) of this section.

(g) *Procedural requirements for suspension.* (1) The vice president, Supply Management will notify a supplier of a suspension or an extension of a suspension and the reason(s) for the suspension or extension in writing sent to the supplier by Certified Mail, return receipt requested, within ten days after the effective date of the suspension or extension. A copy of the notice will be furnished to the Office of the Inspector General.

(2) The notice will state the cause(s) for the suspension or extension.

(3) Within thirty days of notice of suspension or an extension, a supplier may submit to the vice president, Supply Management, in writing, any information or reason(s) the supplier believes makes a suspension or an extension inappropriate, and the vice president, Supply Management, in consultation with the General Counsel, will consider the supplier's submission, and, in their discretion, may revoke a suspension or an extension of a suspension. If a suspension or extension is revoked, the revocation will be in writing and a copy of the revocation will be sent to the supplier by Certified Mail, return receipt requested. A copy of the revocation will be furnished to the Office of the Inspector General.

(h) *Causes for debarment.* (1) The vice president, Supply Management, with the concurrence of the General Counsel, may debar a supplier, including its affiliates, for cause such as the following:

(i) Conviction of a criminal offense incidental to obtaining or attempting to obtain contracts or subcontracts, or in the performance of a contract or subcontract.

(ii) Conviction under a Federal antitrust statute arising out of the submission of bids or proposals.

(iii) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property.

(iv) Violation of a Postal Service contract so serious as to justify debarment, such as willful failure to perform a Postal Service contract in accordance with the specifications or within the time limit(s) provided in the contract; a record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more Postal Service contracts occurring within a reasonable period of time preceding the determination to debar (except that failure to perform or unsatisfactory performance caused by acts beyond the control of the supplier may not be considered a basis for debarment); violation of a contractual provision against contingent fees; or acceptance of a contingent fee paid in violation of a contractual provision against contingent fees.

(v) Any other offense indicating a lack of business integrity or business honesty.

(vi) Any other cause of a serious and compelling nature that debarment is warranted.

(2) The existence of a conviction in paragraph (h)(1)(i) or (ii) of this section can be established by proof of a conviction in a court of competent jurisdiction. If an appeal taken from such conviction results in a reversal of the conviction, the

debarment may be removed upon the request of the supplier, unless another cause or another basis for debarment exists.

(3) The existence of any of the other causes in paragraphs (h)(1)(iii), (iv), (v), or (vi) of this section can be established by a preponderance of the evidence, either direct or indirect, in the judgment of the vice president of Supply Management.

(4) The criminal, fraudulent, or improper conduct of an individual may be imputed to the firm with which he or she is or has been connected when an impropriety was committed. Likewise, when a firm is involved in criminal, fraudulent, or other improper conduct, any person who participated in, knew of, or had reason to know of the impropriety may be debarred.

(5) The criminal, fraudulent, or other improper conduct of one supplier participating in a joint venture or similar arrangement may be imputed to other participating suppliers if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of the supplier. Acceptance of the benefits derived from the conduct will be evidence of such knowledge, approval, or acquiescence.

(i) *Mitigating factors.* (1) The existence of any cause for debarment does not necessarily require that a supplier be debarred. The decision to debar is within the discretion of the vice president, Supply Management, with the concurrence of the General Counsel, and must be made in the best interest of the Postal Service. The following factors may be assessed in determining the

seriousness of the offense, failure, or inadequacy of performance, and may be taken into account in deciding whether debarment is warranted:

(i) Whether the supplier had established written standards of conduct and had published internal control systems at the time of the activity that constitutes cause for debarment or had adopted such procedures prior to any Postal Service investigation of the activity cited as a cause for debarment.

(ii) Whether the supplier brought the activity cited as a cause for debarment to the attention of the Postal Service in a prompt, timely manner.

(iii) Whether the supplier promptly and fully investigated the circumstances involving debarment and, if so, made the full results of the investigation available to appropriate officials of the Postal Service.

(iv) Whether the supplier cooperated fully with the Postal Service during its investigation into the matter.

(v) Whether the supplier paid or agreed to pay all criminal, civil and administrative liability, and other costs arising out of the improper activity, including any investigative or administrative costs incurred by the Postal Service, and made or agreed to make full restitution.

(vi) Whether the supplier took appropriate disciplinary action against the individual(s) responsible for the activity that could cause debarment.

(vii) Whether the supplier implemented and/or agreed to implement remedial measures, including those identified by the Postal Service.

(viii) Whether the supplier instituted and/or agreed to institute new and/or revised review and control procedures and ethics programs.

(ix) Whether the supplier had adequate time to eliminate circumstances within the supplier's organization that could lead to debarment.

(x) Whether the supplier's senior officers and mid-level management recognize and understand the seriousness of the misconduct giving rise to debarment.

(2) The existence or nonexistence of mitigating factors or remedial measures such as those above is not determinative whether or not a supplier should be debarred. If a cause for debarment exists, the supplier has the burden of demonstrating, to the satisfaction of the vice president, Supply Management that debarment is not warranted or necessary.

(j) *Period of debarment.* (1) When an applicable statute, executive order, or controlling regulation of other agencies provides a specific period of debarment, that period applies. In other cases, debarment by the Postal Service should be for a reasonable, definite, stated period of time, commensurate with the seriousness of the offense or the failure or inadequacy of performance. Generally, a period of debarment should not exceed three years. When debarment for an additional period is deemed necessary, notice of the proposed additional period of debarment must be furnished to the supplier as in the case of original debarment.

(2) Except as precluded by an applicable statute, executive order, or controlling regulation of another agency, debarment may be removed or the period may be reduced by the vice president, Supply Management when requested by the debarred supplier and when the request is supported by a

reasonable justification, such as newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management, or the elimination of the causes for which debarment was imposed. The vice president, Supply Management may, at his or her discretion, deny any request or refer it to the Judicial Officer for a hearing and for findings of fact, which the vice president, Supply Management will consider when deciding the matter. When a debarment is removed or the debarment period is reduced, the vice president, Supply Management must state in writing the reason(s) for the removal of the debarment or the reduction of the period of debarment.

(k) *Procedural requirements for debarment.* (1) After securing the concurrence of the General Counsel, the vice president, Supply Management will initiate a debarment proceeding by sending the supplier a written notice of proposed debarment. The notice will be served by sending it to the last known address of the supplier by Certified Mail, return receipt requested. A copy of the notice will be furnished to the Office of Inspector General. The notice will state that debarment is being considered; the reason(s) for the proposed debarment; the anticipated period of debarment and the proposed effective date; and that, within thirty days of the notice, the supplier, individually or through a representative, may submit in person or in writing information and argument in opposition to the proposed debarment. In the event a supplier does not submit information or argument in opposition to the proposed debarment to the vice president, Supply Management within the time allowed, the debarment will become final with no further review or appeal.

(2) If the proposed debarment is based on a conviction or civil judgment, the vice president, Supply Management, with the concurrence of the General Counsel, may decide whether debarment is merited based on the conviction or judgment, including any information received from the supplier. If the debarment is based on other circumstances or if there are questions regarding material facts, the vice president, Supply Management may seek additional information from the supplier and/or other persons, and may request the Judicial Officer to hold a fact-finding hearing on such matters. The hearing will be governed by rules of procedure promulgated by the Judicial Officer. The vice president, Supply Management may reject any findings of fact, in whole or in part, when they are clearly erroneous.

(3) Questions of fact to be resolved by a hearing before the Judicial Officer will be based on the preponderance of the evidence.

(4) After consideration of the circumstances and any information and argument submitted by the supplier, the vice president, Supply Management, with the concurrence of the General Counsel, will issue a written decision regarding whether the supplier is debarred, and, if so, for the period of debarment. The decision will be mailed to the supplier by Certified Mail, return receipt requested. A copy of the decision will be furnished to the Office of the Inspector General. The decision will be final and binding, unless the decision was procured by fraud or other criminal misconduct, or the decision was obtained in violation of the regulations contained in this part or an applicable public law enacted by Congress.

Stanley F. Mires,

Attorney, Federal Requirements.

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